*** THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY**

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AND

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*** THE HON'BLE SRI JUSTICE C.V. RAMULU**

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+ W.P. Nos.20537 and 19552 of 2004

% Dated 26-04-2005

State of Andhra Pradesh

Rep. by the Mandal Revenue Officer,

Khairtabad Mandal, Hyderabad District. … Petitioner

Vs.

$ Smt. Pramila Modi & Others … Respondents

! Counsel for the Petitioner in W.P. No.20537 of 2004:
The Advocate General

! Counsel for the Petitioners in W.P. No.19552 of 2004:
Sri D. Prakash Reddy, Sr. Advocate, for Sri Satyanarayana Rao Adiraju, Adv.

^ Counsel for Respondent 1 in W.P. No.20537 of 2004 :
Sri. E. Manohar Sr. Advocate, for Sri C. Hanumantha Rao, Adv.

^ Counsel for Respondents 2 to 8 in W.P. No.20537 of 2004: Sri D. Prakash Reddy, Sr. Advocate, for Sri Satyanarayana Rao Adiraju, Adv.

^ Counsel for Respondents 1 & 2 in W.P. No.19552 of 2004: G.P. for Revenue.

^ Counsel for Respondents 3 & 4 in W.P. No.19552 of 2004:
G.P. for Home.

< GIST:

> HEAD NOTE:

? Cases referred

1) 2000(4) ALD 126 (DB)

2) (2002) 3 SCC 258

3) (2004) 7 SCC 398

4) AIR 1955 SC 352

5) AIR 1962 SC 141 (V 49 C 25)

6) AIR 1989 SC 1809

7) AIR 1997 SC 2181

8) (1996) 6 SCC 223

9) 2001 (5) ALD 102

10) AIR 2004 SC 3894

11) 2002(5) ALT 370 (D.B.)

12) (2004) 1 SCC 287

13) 2001(3) ALT 200

14) (2003) 10 SCC 121

15) AIR 1964 SC 477

16) 1955 (1) SCR 250

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT:

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION Nos.20537 & 19552 OF 2004

WRIT PETITION No.20537 of 2004

Between:

State of Andhra Pradesh,

Rep. by the Mandal Revenue Officer,
Khairtabad Mandal, Hyderabad District.

..... PETITIONER

AND

1) Smt. Prameela Modi, W/o Late Dr.C.L. Modi

R/o D.No. 4-4-248, Sultan Bazar, Hyderabad.

2) N. Krishna Mohan, S/o Saraiah,
R/o D.No.15/A, Road No.5, Jubilee Hills, Hyderabad.

3) N. Varalakshmi, W/o Krishan Mohan,
R/o D.No.15/A, Road No.5, Jubilee Hills, Hyderabad.

4) V.V.S.R. Anjaneyulu, S/o V.S.N. Murthy,
R/o D.No.17/A, Road No.2, Jubilee Hills, Hyderabad.

5) K. Vijaya Kumar, S/o Lakshminarayana,
R/o D.No.51, Srinagar Colony, Hyderabad.

6) Raavi Venkateshwara Rao, S/o Raavi Sobhanadeshwara Rao, C/o.Sobhana Theatre, Balanagar, Hyderabad.

7) M/s. Siva Sankar Real Estates, Plot No.32, Hindinagar, Panjagutta, Hyderabad,
Rep. by its M.D. Sri G.S.P.V. Veera Reddy.

8) D. Dinesh Kumar Reddy, S/o Dastagiri Reddy,
C/o. Siva Sankar Real Estates, Plot No.32,

Hindi Nagar, Panjagutta, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records from the Hon'ble Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 Hyderabad, pertaining to L.G.C. No. 10 of 2002, dated 30-7-2004 and set aside the same, as the same is illegal and arbitrary and consequently declare the respondents as land grabbers.

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WRIT PETITION No.19552 of 2004

Between:

1) Sri N. Krishna Mohan S/o Late Sri Saravaiah,
aged about 62 years, Occ: Business

R/o 6-3-802, Ameerpet, Hyderabad,

Rep. by his G.P.A. Holder Sri Raj Kumar Malpani

S/o Sri Jagdish Prasad Malpani, aged 52 years,
Occ: Business, R/o. H.No. 8-2-608/35 & 36,

Gaffar Khan Colony, Road No. 10, Banjara Hills,

Hyderabad.

2) M/s. Maheshwari Builders,

a partnership firm having its Office at level - III,

MPM-Mall, Abids, Hyderabad,
Rep. by its Partner Raj Kumar Malpani

S/o Sri Jagdish Prasad Malpani,

Aged about 52 yrs, Occ: Business,

R/o H.No.8-2-608/35 & 36,

Gaffar Khan Colony, Road No. 10, Banjara Hills,

Hyderabad

..... PETITIONERS

AND

1) The District Collector, Hyderabad,

Office of the Collector and District Magistrate,
Nampally, Hyderabad.

2) The Mandal Revenue Officer, Khairatabad Mandal,
Khairatabad, Hyderabad.

3) The Assistant Commissioner of Police,

Banjara Hills, Hyderabad.

4) The Station House Officer, Banjara Hills Police Station,
Banjara Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue an order, direction of a writ more particularly one in the nature of a writ of Mandamus declaring the action of the Respondents No.1 and 2 in trying to illegally dispossess the Writ Petitioners with the aid of Respondents No.3 and 4 from the property in Survey No. 116/2 and 116/3 , situated at Road No.1 and 3 junction, Nagarjuna Circle, Banjara Hills, Hyderabad in respect of which the Petitioner No.1 is the absolute owner and possessor as held by the Special Court under the Andhra Pradesh Land Grabbing (P) Act, 1982 by Judgment, dated 30-07-2004, while dismissing L.G.C. No.10 of 2002 filed by the State of Andhra Pradesh against the Petitioner No.1 and other owners, as illegal, arbitrary, unconstitutional and against the principles of natural justice.

Counsel for the Petitioner in W.P. No.20537 of 2004:
The Advocate General.

Counsel for Respondent No.1 in W.P. No.20537 of 2004: Sri E. Manohar, Sr. Advocate for Sri C. Hanumantha Rao,
Adv.

Counsel for Respondents 2 to 8 in W.P. No.20537 of 2004: Sri D. Prakash Reddy, Sr. Advocate for Sri Satyanarayana Rao Adiraju, Adv.

Counsel for the Petitioner in W.P. No.19552 of 2004:
Sri D. Prakash Reddy, Sr. Advocate for Sri Satyanarayana Rao Adiraju, Adv.

Counsel for Respondent Nos.1 & 2 in W.P. No.19552 of 2004: G.P. for Revenue

Counsel for Respondents 3 & 4 in W.P. No.19552 of 2004: G.P. for Home.

The Court made the following :

COMMON ORDER:(Per Hon'ble Sri Justice B. Sudershan Reddy)

INTRODUCTION:

The facts leading to filing of these writ petitions are tell-tale. They are required to be noticed in somewhat detail. Where do we begin ? The *lis* between the mighty State and its citizens centres around a piece of land admeasuring Acs.3-27 guntas situated in Khairtabad village, Hyderabad District. The dispute that began prior to Hyderabad State attained its freedom still awaits its resolution. The all powerful State used weapon after weapon from its armoury against the respondents unhindered by adverse quasi-judicial verdicts as well as judicial pronouncements. We shall notice the phase-wise events.

PHASE – I:

Khairtabad village was a Surfekhas village i.e. the private property of H.E.H. The Nizam. The initial survey of Khairtabad village was conducted in the

year 1324 Fasli. That according to the entries made in the original *sethwar, the entire extent of land in Survey No.115 is shown as
Acs.18-01 gunta. Likewise, the total extent of land in Survey No.116 is shown as Acs.52-34 guntas, classified as Poramboke land.

Smt. Pramila Modi (Respondent No.1 in W.P. No.20537 of 2004 and L.G.C. No.10 of 2002) purchased a piece of land admeasuring Acs.4-25 guntas in Survey Nos.115/2 and 115/3 in Khairtabad village, under the registered sale deed, dated 1st Farwardi, 1355 Fasli from one Smt. Rabia Begum wife of Nawab Dastagir Nawaj Jung Bahadur for a valuable sale consideration of O.S. Rs.25,000/-. According to the revenue records of 1348 Fasli (1937 A.D.), Smt. Rabia Begum was pattadar of only an extent of Acs.3-37 guntas of land forming part of Survey No.115/2 (Acs.2-00), and Survey No.115/3 (Ac.1-37 guntas), respectively. The balance area in Survey No.115 was partly low-lying and known as Enugala Kunta and partly Smashan adjacent to Hindu Smashan Ghat in Survey No.116. The said Pramila Modi was actually put in possession of the land in Survey No.116, as no land was available in Survey Nos.115/2 and 115/3. Having realised the fraud played by her vendor, Pramila Modi approached the Surfekhas authorities seeking appropriate relief. The Minister for Surfekhas Mubarak passed the order in File No.99/45 of 1356 Fasli recognising the possession of Pramila Modi over an extent of Acs.3-27 guntas of land in Survey No.116.

A supplementary sethwar was issued in letter No.2615, dated 23rd Meher, 1356 Fasli in Motemadi File No.99/45 of 1356 Fasli. The entries in the supplementary sethwar reveal that Survey No.116 of Khairtabad village was sub-divided as under:

Sl. No. Sy. No. Extent Classification

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1. 116/1 Acs.47-30 gts. Poramboke

2. 116/2 2-21 Non-Agriculture land

of Smt. Pramila Modi

3. 116/3 1-06 House of

Smt. Pramia Modi

4. 116/4 0-02 Temple

5. 116/5 1-15 Fallow (Padath)

That the said supplementary sethwar was issued on the basis of Mohatmim Bandobust File No.352, dated

1st Khurdad, 1357 Fasli in File No.99/45 of 1356 Fasli.

Thereafter Pramila Modi herself disposed of part of the land i.e. an extent of 7600 square yards in favour of one

Meer Basheeruddin Ahmed Khan under document No.287/1357 Fasli, dated 2nd Amardad, 1357 Fasli; and an extent of 3588 square yards in favour of Dr. Roop Karan under document No.170/1357 Fasli, dated 1st Khurdad

1357 Fasli. The said two persons subsequently sold the land purchased by them to various individuals who in turn sold in favour of Respondents 2 to 8 in

W.P. No.20537 of 2004. However, the supplementary sethwar issued under the orders of the competent authority were not implemented in the revenue records.

PHASE – II:

As the matter stood thus, Pramila Modi preferred an application before the Collector, Hyderabad, on 10-12-1963, with a request to demarcate and fix the boundaries of the land purchased by her from Smt. Rabia Begum.

The provocation for filing such an application was that her neighbours allegedly tried to encroach upon the land since there were no boundary stones and the same was likely to result in breach of peace. That an elaborate enquiry was held in the matter and the Collector, Hyderabad rejected her request vide Memo, dated 03-04-1964, duly informing

Smt. Pramila Modi that her request cannot be considered unless her name is mutated in the revenue records based upon the sale deed produced by her for correction of survey errors, if any. Smt. Pramila Modi, thereafter filed an appeal against the order of the Collector, dated 03-04-1964, before the Director of Settlements, Survey and Land Records.

The Director of Settlements, Survey and Land Records having perused the records including File No.99/45 of 1356 Falsi, passed orders, dated 29-05-1964, (Ex.B-4 in L.G.C. No.10 of 2002) finding that the title of Smt. Pramila Modi for an extent of Acs.3-27 guntas of land in Survey Nos.116/2 and 116/3 had already been granted and recognised by the Surfekhas authorities and necessary entries were accordingly made by issuing a supplementary sethwar. Directions were accordingly issued to localize and sub-divide the land claimed by Smt. Pramila Modi. The request of Smt. Pramila Modi to recognise her title for whole of the land admeasuring Acs.4-25 guntas purchased by her from Smt.

Rabia Begum under the registered sale deed, dated 1st Farwardi, 1355 Fasli was, however, rejected by the Director with an observation that "The supplementary sethwar which has been issued is an official document and the official authority in the matter.

The registered sale-deed is a private document and cannot be accepted in the light of the supplementary sethwar which has been issued – more so because the supplementary sethwar is of a later date. It is also a matter for consideration that when the supplementary sethwar was issued it was always open to the petitioner Mrs. C.L. Modi to object or represent against this issue of the supplementary sethwar with the restricted area shown in it. This not having been done at that time it is not open to her to object to the limited extent at this later stage. I therefore agree with the Land Record Officer that the supplementary sethwar should be accepted on the question of the extent of land to which the claim of the petitioner should be restricted."

This order passed by the Director of Settlements, Survey and Land Records was challenged by Hindu Smashan Committee before the Board of Revenue. The Board of Revenue vide its order, dated 24-02-1965, (Ex.B-9 in L.G.C. No.10 of 2002), having reconsidered the entire issue with reference to available documents including that of Surfekhas Secretariat in File No.99/45 of 1356 Falsi, found that

the issue as to the entitlement of the extent of land by Pramila Modi has been resolved under the orders of Surfekhas authorities by entering her name as against Survey Nos.116/2 and 116/3, admeasuring Acs.3-27 guntas.

The Board of Revenue accordingly held that Pramila Modi is entitled to only an extent of Acs.3-27 guntas of land in Survey Nos.116/2 and 116/3 and not the entire extent of land admeasuring Acs.4-25 guntas claimed by her before the Collector. It was further found that "she is not entitled to be in possession over

and above Acs.3-27 guntas of land and her possession, if any, over and above the said extent, it shall be deemed to be illegal encroachment and liable to be evicted." It is held "in short, Mrs. Modi is entitled to get her land demarcated to the extent of Acs.3-27 guntas in Survey Nos.116/2 and 116/3 as per the plan approved by the Surfekhas Secretariat and included in File No.99/45 of 1356 Fasli which shall include the land covered by two sale deeds already executed by her in 1357 Fasli. If Mrs. Modi has got possession over any extent above Acs.3-27 guntas, it shall be deemed to be illegal and she shall be evicted under law by the Revenue authorities."

The revision petition preferred against the orders of the Board of Revenue was dismissed by the Government vide its order, dated 03-12-1968 (Ex.B-10 in L.G.C. No.10 of 2002). Thus the said order has become final.

PHASE – III:

Smt. Pramila Modi aggrieved by the inaction on the part of the Collector, Land Records, Hyderabad, and his subordinates in implementing the orders passed by the Board of Revenue, dated 24-02-1965, filed W.P. No.4526 of 1975 (Ex.B-13 in L.G.C. No.10 of 2002) in the High Court of A.P., with a prayer to issue a Writ of Mandamus to implement the order of the Board of Revenue, dated 24-02-1965, and the order of the Government, dated 03-12-1968, by demarcating the land in Survey Nos.116/2 and 116/3, Khairatabad, Hyderabad, and mutating her name in the village and the land records. This Court vide its order, dated 28-08-1975 (Ex.B-36 in L.G.C. No.10 of 2002), in W.P.M.P. No.6897 of 1975, issued interim directions directing the Collector, Land Records, Hyderabad, and the Tahsildar, Urban Himayatnagar, Hyderabad, to implement the order of the Board of Revenue, dated 24-02-1965, and the order of the Government, dated 03-12-1968, by demarcating the land and mutating the name of Smt. Pramila

Modi in the village and land records as prayed for. The District Collector filed a detailed counter affidavit in W.P. No.4526 of 1975 stating that he has completed the demarcation work as directed by the High Court.

In the meanwhile the town survey undertaken by the Government was published by way of notification (Ex.A-1 in L.G.C. No.10 of 2002) issued under Section 13 of the
A.P. Survey and Boundaries Act, 1923 (for short 'the Boundaries Act') and was published in the A.P. Gazette No.60, dated 25-09-1976.

However, the interim order passed by the High Court remained unimplemented resulting in Pramila Modi filing C.C. No.44 of 1976 in which the Tahsildar filed counter affidavit stating that "Smt. Pramila Modi is being informed that the supplementary sethwar has been since received and steps for implementing the same are being taken and the said mutation would be finalized during Jamabandi." Recording the said undertaking the contempt case was closed by this Court vide its order, dated 24-02-1977.

PHASE – IV :

That on the basis of the entries made in the
Town Survey Land Register (for short 'the TSLR'), proceedings, dated 03-11-1991, under the A.P. Land Encroachment Act, 1905 (for short 'Land Encroachment Act') were initiated by the Mandal Revenue Officer against
Smt. Pramila Modi requiring her to show cause as to why she should not be summarily evicted from the land in question on the ground that she had encroached into the land which is classified as Government Poramboke in the TSLR. On appeal, the Revenue Divisional Officer vide his order, dated
09-04-1992, confirmed the order passed by the Mandal Revenue Officer. The

Commissioner of Land Revenue vide order, dated 08-05-1992, remitted the matter for fresh consideration by the Joint Collector, in accordance with law. The Joint Collector vide his order, dated 28-08-1993, having

re-examined the entire issue with reference to chronology of events referred to hereinabove and the available documents confirmed Smt. Pramila Modi's title and possession over the land admeasuring Acs.3-27 guntas in Survey Nos.116/2 and 116/3. The Joint Collector further directed her to approach the Collector for correction of revenue records including the TSLR. The District Collector vide his proceedings, dated

15-02-1994, forwarded the proposal to the Commissioner, Survey Settlement and Land Records for necessary orders to correct the town survey records in view of the orders passed by the various authorities including the High Court of Andhra Pradesh. The Commissioner, Survey Settlement and Land Records vide his orders, dated 12-05-1994, accorded permission for correction of the entries in the TSLR and the mutation was accordingly implemented.

PHASE – V :

Respondents 2 to 8 in W.P. No.20537 of 2004 being the purchasers of the land from Smt. Pramila Modi approached the District Collector seeking 'No Objection Certificate' in order to enable them to approach the Municipal Corporation of Hyderabad for permission to construct buildings in their land purchased by them forming part of Survey Nos.116/2 and 116/3. The District Collector vide memo, dated

29-10-1997, rejected the application and accordingly refused to issue 'No Objection Certificate' as prayed for claiming the land in question to be the Government property.

W.P. No.10159 of 1998 filed by respondents 2 to 8 challenging the Memo, dated 29-10-1997, of the District Collector, was allowed by this Court vide its order, dated

30-10-1998, directing the District Collector to issue

'No Objection Certificate' as prayed for.

The District Collector preferred W.A. No.2235 of 1998 against the order passed by the learned single Judge issuing directions to issue No Objection Certificate. A Division Bench of this Court dismissed the said appeal in the decision reported in the ***District Collector, Hyderabad & another v. N. Krishna Mohan & Others***, with an observation "when once the petitioners established their possession and enjoyment of the land in question, the 2nd respondent-MCH should have granted permission in favour of the petitioners for construction of buildings instead of driving them to

1st respondent-Collector to obtain No Objection Certificate.....Earlier orders passed by the Director of Settlements, Board of Revenue and also the Commissioner of Survey, Settlement and Land Record should not have been lightly brushed aside by the District Collector. Further he has no appellate powers to comment upon the correctness of the orders passed by the other authorities.

He is not a civil Court to give a finding on the title to the property. If he had doubted the petitioners' title to the property, nothing prevented him to initiate proceedings before appropriate forum."

The Supreme Court of India vide its order, dated

18-08-2000, dismissed the S.L.P. No.12103 of 2000 filed by the District

Collector and the Commissioner of Survey Settlement and Land Records against the judgment of the High Court in W.A. No.2235 of 1998.

PHASE – VI :

Obviously, taking advantage of the observations referred to hereinabove made in the orders passed by this Court,
the petitioner-State of A.P., represented by Mandal Revenue Officer, Golconda (for short 'the State') preferred L.G.C. No.10 of 2002 before the Special Court under the provisions of the
A.P. Land Grabbing (Prohibition) Act, 1982 seeking to declare the State as the owner of the application schedule land (land in question) and further declare the respondents to be
"land grabbers".

In the concise statement filed in the L.G.C., it is mainly pleaded that the land admeasuring Acs.3-27 guntas forms part of Survey Nos.116/1 part of Khairtabad correlated to T.S. No.3/1, Block-K and Ward No.89, and is classified as Government land in the TSLR and the same has been "grabbed" by the respondents without any lawful entitlement thereto. It is alleged that Smt. Pramila Modi got issued supplementary sethwar in 1356 Fasli for the land in Survey No.116 for which she has no title; supplementary sethwar was issued under a mistaken impression by the Surfekhas authority without properly verifying the facts as to whether the land purchased by Smt. Pramila Modi is located in Survey No.115 or Survey No.116 of Khairtabad village. Town survey of Khairtabad village was conducted during the years

1965-1970 under the Boundaries Act; after completing the town survey, statutory notification as required under

Section 13 of the Act was published in the A.P. Gazette No.60, dated 25-09-1976; the said notification has not been challenged by way of suit as provided under Section 14 of the Boundaries Act and thus the entries in the town survey records have become final and conclusive proof of Government's title over the land in question. In the town survey, the land in question is recorded as Government land. The proceedings, dated 12-05-1994, of the Commissioner of Survey Settlement and Land Records, for correction of entries in the TSLR is contrary to law; Corrections in the TSLR, if at all, can be made only in accordance with the decree of a competent civil Court as provided for under Section 14 of the Boundaries Act.

Smt. Pramila Modi filed a detailed counter narrating all the facts, which we have noticed hereinabove. She mainly relied upon the supplementary sethwar issued vide letter No.2615, dated 23rd Meher, 1356 Fasli under which Survey No.116 was sub-divided into Survey Nos.116/1, 116/2 and 116/3 in which her name was entered as "pattadar" in respect of the land admeasuring Acs.3-27 guntas in Survey Nos.116/2 and 116/3 and the same has become final. It was also contended that the entries made in the TSLR or revenue records cannot by themselves confer ownership or title and such entries made by the State in its favour without any legal basis and without verifying the necessary title and ownership, have no legal sanctity. Reliance was placed upon the orders passed by various quasi-judicial authorities as well as the order passed by this Court.

The counter of respondents

2 to 8 is more or less on the similar lines. It was specifically pleaded that the possession of Smt. Pramila Modi is evident and traceable for a period of more than 50 years, which constitutes adverse possession, and she has perfected

her title by prescription.

The Special Court upon appreciation of both oral and documentary evidence made available by the parties, dismissed the L.G.C. while confirming the title and possession of the respondents over the land in question vide its order, dated 30-07-2004. Hence, this writ petition.

PHASE – VII :

That even after dismissal of the L.G.C., the revenue authorities with the aid of the police tried to dispossess the respondents unlawfully from the land in question on account of which the respondents filed W.P. No.19552 of 2004 in this Court and obtained an interim order on 26-10-2004 in W.P.M.P. No.25599 of 2004 restraining the revenue authorities and police authorities from interfering with

the peaceful possession and enjoyment of the respondents over the land in question. That is how both the writ petitions are interconnected and taken up together for disposal.

SUBMISSIONS :

Learned Advocate General, appearing on behalf of the State, submitted that the State *prima facie* proved its ownership over the land in question and the burden of proof is on the respondents to establish that the land has not been 'grabbed'

by them which they have failed to prove.

The entries made in the revenue records based upon which the respondents claim title do not confer any right and title over the land in question. The supplementary sethwar issued on the basis of the sale deed, which is the source of title and possession was not produced before the Special Court and was not marked; therefore adverse inference has to be drawn against the 1st respondent (Smt. Pramila Modi) as to the purchase of the disputed land. The order passed by the Commissioner of Survey Settlement and Land Records is an order without any authority and void in the eye of law and the same cannot be relied upon for whatever purposes.

Sri E. Manohar, learned senior counsel, appearing on behalf of the 1st respondent/Smt. Pramila Modi, *inter alia*, submitted that the order of the Commissioner of Survey Settlement and Land Records, dated 12-05-1994, is not a void order as it directed necessary correction of wrong entries in the TSLR showing the name of the Government contrary to and in violation of the orders passed by this Court in W.P.M.P. No.6897 of 1975 in W.P. No.4526 of 1975 and in C.C. No.44 of 1976, which were marked as Exs.B-36 and B-17 respectively before the Special Court in L.G.C. No.10 of 2002. The order of the Commissioner of Survey Settlement and Land Records merely gives effect to the orders passed by this Court; it is not an independent adjudication of right and title of the respondents to the disputed land by the Commissioner. It is further submitted that the entries in the TSLR would not by themselves confer or extinguish right, title and interest of the respondents in the land. That even if, such corrections are not made by giving effect to the order, the title of Smt. Pramila Modi which has been recognized by the Surfekhas authorities as early as in the year 1356 Fasli by issuing supplementary sethwar cannot be disputed in any manner whatsoever. It was also submitted that Smt. Prmila

Modi never based her title under the sale deed executed by Smt. Rabia Begum in 1355 Fasli, since the controversy had already been resolved by the Surfekhas administration by directing to issue a supplementary sethwar duly incorporating the name of Smt. Pramila Modi as 'pattadar' in respect of the land admeasuring Acs.3-27 guntas in Survey Nos.116/2 and 116/3. Smt. Pramila Modi became 'pattadar' under valid orders issued by the Surfekhas Administration and the same cannot be questioned on any ground whatsoever after a long lapse of more than 50 years after the event. Learned senior counsel further submitted that the Government having given a solemn undertaking to demarcate the land and give effect to the order passed by the Board of Revenue in the year 1964 itself, cannot be permitted to turn round and contend respondents to be the "land grabbers".

It is submitted that the claim of Smt. Pramila Modi is not based on the mere entries in the revenue records but on various orders passed by the quasi-judicial authorities and more particularly on the supplementary sethwar issued by the Surfekhas administration. Non-production of the sale deed is of no consequence.

Sri D. Prakash Reddy, learned senior counsel, appearing on behalf of respondents 2 to 8 in W.P. No.20537 of 2004, contends that the State suppressed material facts by stating only few facts in the concise statement filed in the L.G.C. The order passed by the Commissioner of Survey Settlement and Land Records, the Board of Revenue and the Government of Andhra Pradesh and thereafter in the second phase of litigation by the Joint Collector and the orders of this Court did not form part of pleadings in the L.G.C. It is not the case of the State that the supplementary sethwar issued by the Surfekhas Secretariat was a fabricated one or the land involved herein i.e. the land in

Survey Nos.116/2 and 116/3 is a Poramboke land. The whole claim of the State is based on the entries made in the revenue records in respect of Survey Nos.116/1 with which the respondents are not concerned in any manner whatsoever. That even before merger of Surfekhas property in Diwani, the right, title and interest of Smt. Pramila Modi in respect of the land admeasuring Acs.3-27 guntas in Survey Nos.116/2 and 116/3 was created and recognised by the previous Government and the State being the successor Government is bound by the same. The Surfekhas administration was competent to grant and/or recognize the title of any person

to any land in Surfekhas (Personal property of Nizam). Learned senior counsel submitted that at any rate, the respondents herein cannot be characterised as land grabbers. There is no act of any "land grabbing".

From the above pleadings and the contentions raised, the following questions fall for our consideration:

1. *Whether the respondents in W.P. No.20537 of 2004 have 'grabbed' the land and are liable to be declared as 'land grabbers' ?*

2. *What is the effect of the entries made in the Supplementary sethwar issued by the Surfekhas Administration as early as in the year 1356 Fasli ?*

3. *Whether the entries in TSLR by themselves confer or extinguish the right, title and interest of any person over the land ?*

4. *Whether the order, dated 12-05-1994, passed by the Commissioner of Survey Settlement and Land Records is void, and, if so, what*

is its effect ?

5. *Whether the judgment of the Special Court suffers from any infirmities and errors apparent on the face of the record requiring interference of this Court in exercise of its Certiorari jurisdiction ?*

Question 1:

Whether the respondents in W.P. No.20537 of 2004 have grabbed the land and are liable to be declared as land grabbers ?

In order to appreciate and decide as to whether the respondents have grabbed the land, it would be proper to peruse certain relevant provisions of the Act.

The expression "**land grabber"** is defined in

Section 2 (d) of the Act which means "a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest."

The expression "***land grabbing***" is defined in Section 2(e) of the Act which means "every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorised structures."

I n ***Konda Lakshmana Bapuji v. Government of A.P. & Others*****,** the Supreme Court interpreted the expression "land grabber" in Clause (d) of Section 2 of the Act and "land grabbing" in Clause (e) of Section 2 of the Act and observed:

> "A combined reading of clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land grabber" it must be shown that: (*i*)(a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction,
> or use and occupation of uanuthorised structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon; or (iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges

by criminal intimidation; or (iv) he is abetting the doing of any of the abovementioned acts; or (v) that he is the successor-in-interest of any such persons."

In ***Gouni Satya Reddi v. Government of A.P. and others,*** the Supreme Court having referred to Section 2(d) and 2(e) of the Act held:

> "From a reading of the definitions of the phrases "land grabber" and "land grabbing"
> it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally.
> That is to say, the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such elements as indicated above are missing in our view, it would not be a case of land grabbing."

It is further observed:

> "Mere fact of not being lawfully entitled to enter into possession by itself would not lead to the inference of land grabbing *unless possession is illegally taken with that view in mind.* It is a necessary ingredient of land grabbing i.e. the person taking possession must know it that he is acting illegally while taking possession."

In the L.G.C., it is nowhere stated that the respondents have taken possession of the land in question illegally with that view in mind nor there is any evidence to that effect. What is alleged is that the respondents were never in possession and occupation of the land in question till 1990 and during 1990, Smt. Pramila Modi constructed a house in an extent of 800 square yards with compound wall and the remaining area is vacant.

There is no allegation of any of the respondents unauthorisedly, unfairly, greedily or violently snatched the land belonging to the Government. There is no allegation much less any proof that the respondents have taken possession illegally and fully knowing that they were acting illegally while taking possession.

The State miserably failed to establish the fact pleaded by it in the L.G.C. There is no explanation forthcoming about issuance of supplementary sethwar in 1357 Fasli duly incorporating the name of Smt. Pramila Modi as 'pattadar' of the land for an extent of Acs.3-27 guntas in Survey Nos.116/2 and 3. That a map was also directed to be issued by the Superintendent of Survey of Surfekhas administration to effect the entries in the survey records.

The records of Surfekhas Secretariat in File No.99/45 of 1356 Fasli contains the final draft plan of Survey Nos.116/2 and 116/3, admeasuring Acs.3-27 guntas of land and also the orders as to which portion of land should be left out. Neither there is any allegation nor any proof that this record is a fabricated one.

It is not the case of the State that the order, dated
29-05-1964 (Ex.B-4 in LGC No.10 of 2002), passed by the Director of Settlements, Survey and Land Records, and the order, dated 24-02-1965 (Ex.B-9 in LGC No.10 of 2002), passed by the Board of Revenue confirming the order of the Director of Settlements, Survey and Land Records, are fabricated documents. Both the orders were confirmed by the Government vide its order, dated 03-12-1968 (Ex.B-10 in LGC No.10 of 2002). All these orders speak

about the possession and enjoyment of Smt. Pramila Modi over the disputed land. These are not the entries in the revenue records but the orders passed by the quasi-judicial authorities to which the revenue administration was a party. Based upon the said orders, entries were required to be made in the revenue records.

The District Collector, Hyderabad filed a detailed counter affidavit in W.P. No.4526 of 1975 stating that he had completed the demarcation work as directed by the High Court in W.P.M.P. No.6897 of 1975, dated 28-08-1975, (Ex.B-36 in L.G.C. No.10 of 2002). It was not contended before the High Court that Smt. Pramila Modi was not in possession of the land in question and therefore she is not entitled for implementation of the orders passed by the authorities under Exs.B-4, B-9 and B-10 in L.G.C. No.10 of 2002 referred to hereinabove. In the contempt case which was disposed of on 07-02-1977 (Ex.B-17 in LGC No.10 of 2002), an undertaking was given on behalf of the Government that the supplementary sethwar was received in the office of Tahsildar, Hyderabad Urban Taluk on 05-02-1977 and the same would be implemented in the ensuing Jamabandi for the year 1976-77 during April-May of that year. In none of their pleadings, the State questioned the correctness of the supplementary sethwar and the entries made therein nor denied the possession of Smt. Pramila Modi in respect of the land in question. No dispute has been raised as regards her possession.

The contention that Smt. Pramila Modi entered into possession for the first time in 1990 and that too only over an extent of 800 square yards is falsified by the very subsequent proceedings issued by the Mandal Revenue Officer under the provisions of the Land Encroachment Act vide its notice, dated 16-11-1991. The

Joint Collector, Hyderabad, vide order, dated 28-08-1993 (Ex.B-25 in LGC No.10 of 2002), confirmed the title and possession of Smt. Pramila Modi over the disputed land.

I n ***District Collector's Case (1 Supra),*** while adverting to the same contentions urged on behalf of the District Collector as regards the orders passed by the Director of Settlements, Survey and Land Records, the Board of Revenue and this Court, it was observed "the 1st respondent-Collector should have noticed that in the year 1964 itself, the rights of the petitioner were recognised by the Government authorities. For the Collector to act on his own in derogation of the previous orders nearly after 33 years amounts to arbitrariness on his part and such an approach is impermissible in the eye of law." In spite of such finding,

the State had chosen to file L.G.C. against the respondents. There is no act of any "land grabbing" and the respondents, by no stretch of imagination, can be said to be "land grabbers". There is no allegation of forcibly taking possession of any Government land. The respondents did not enter into the land in question with a view to take the possession of the land illegally. Assertion of one's own right, title and interest in the land whether sustainable or not will not amount to any act of land grabbing unless it is established that possession was taken illegally with that view in mind.

Whether the State prima facie proved that the land alleged to have been grabbed by the respondents owned by the Government ?

The Khasra Pahani (1954-55) filed under Ex.A-4 in L.G.C. reveals that only Survey No.116/1 is shown as Government 'poramboke' land and it does not refer to Survey Nos.116/2&3, whereas the claim of the 1st respondent is that a supplementary sethwar was issued indicating her name against Survey Nos.116/2 and 116/3 admeasuring Acs.3-27 guntas of land in Khairtabad

village. In the proceedings of the Director of Settlements, Survey and Land Records, Hyderabad, as noted above, the Land Records Officers, who participated in the proceedings conceded that Survey No.116 was sub-divided and the area claimed by

Smt. Pramila Modi as per the supplementary sethwar was Acs.3-27 guntas. The Special Court while dealing with this issue noticed as under:

> "……if really, the application schedule property is located in S.No.116/1, the burden is heavily on the applicant to prove when actually the Sy. No.116 was sub-divided.
> The applicant is the custodian of the revenue records as well as survey records.
> The non-production of the subdivision of Sy.No.116, 116/1 it amounts that the application does not know when the Sy.no.116 was subdivided. Further, the evidence of P.W.1. is that the 1st respondent herein purchased land an extent of Ac.4.25 guntas in Sy.No.115/1 and 115/2 from Rabiya Begum. Hence, as admitted by P.W.1, the
> 1st respondent herein said to have purchased the property in the year 1915. If really, the initial survey was conducted in Khairatabad village in 1324 Fasli i.e. either in 1914 or in 1915 the applicant has not produced any document such as the village map or any revenue records or survey records that Sy.Nos.115 and 116 of Khairatabad village was recorded as Poramboke in the initial survey conducted in 1324 Fasli. As seen from the evidence of P.W.1 that the 1st respondent said to have purchased the land Ac.4.25 guntas located in Sy.No.115. The applicant claims that the application schedule property is located in Sy.No.116/1……
>
> ……When the town survey was not finalized when the Government had the knowledge that the order of the Board of Revenue shall be implemented as directed by the Honourable High Court in Writ petition No.4526 of 1975 and as undertaken by the Government in C.C. No.44 of 1976 at a later stage in the year 2002, the applicant is not competent to question the orders of the Board of Revenue or the orders of the Joint

Collector dated 28/8/1993 under Ex.B-25 and the order of the Commissioner, Survey and Settlement and Land Records dated 12/5/1994 under Ex.B-27…….

The learned Government Pleader would argue that the Joint Collector, the Collector, the Commissioner, Survey and Settlement, Land Records have no power to alter the entries in T.S.L.R. The T.S.L.R. itself is not valid document. When the T.S.L.R. is prepared without any basis or without basing on any valid documents it must be said that the entries in the T.S.L.R. are not valid. Moreover, the Act itself A.P. Survey and Boundaries Act. The entries in TSLR does not confer any title and the town survey people are not competent to prove, who was the owner of the certain land or certain property under A.P. Survey and Boundaries Act. Hence, a perusal of the evidence of P.W.1, we hold that the publication in Gazette that the town survey was finalized by 25/9/1976 itself is not legal and valid as even by 25/9/1976 the applicant was in the custody of the orders of the Honourable High Court in Writ Petition No.4526 of 1975 and even in 1976 the applicant undertook to implement the orders of the Honourable High Court in Writ Petition No.4526 of 1975 to implement the orders of the Board of Revenue under Ex.B9.

…….The H.E.H. Nizam even before the merger of Surfekhas with the Government in 1949 the Sy.No.116 was sub-divided into 116/1, 116/2 and 116/3 in 1356 Fasli and by another sethwar vide letter No.352, dated

1st Khurdar 1357 Fasli the Sy.No.116 was
sub-divided Sy.No.116/2 and 116/3. Hence, during the Fasli 1357, the Sy.No.116 was subdivided into Sy.No.116/2 and 116/3.

The 1st respondent herein approached the Director of Settlement, Survey and Land Records, Board of Revenue and the order was passed by the Director of Settlement, Survey and land Records on 29/5/1964. As seen from the order of the Director under Ex.B-4 there was a structure of a temple etc., on the spot. The area of the 1st respondent in this LGC according to the supplementary sethwar is Ac.3.21 guntas. Hence, as early as in 1964 under Ex.B-4, dated 29/5/1964 the Director of Settlement, Survey and Land Records held the 1st respondent in this LGC the area of the

1st respondent herein according to the supplementary sthwar

is Ac.3.21 guntas.

The Director further held under Ex.B-4 dated 29/5/1964 that the land is located according to the revision survey map. The tank on the south and the road leading to rock castle hotel on the eastern side. The Director, Survey Settlement and Land Records under Ex.B-4, dated 29/5/1964 held "I find that there is slight error in the computation of area and in actual fact the supplementary sethwar has been issued for the extent of Ac.3.27 guntas". The Land Record Officer is directed to localize and subdivide the land claimed by the

1st respondent in this No.352, dated

1st Khurdad 1357 Fasli in file No.99/45 of 1356 Fasli. Hence, the title of the 1st respondent herein was upheld by the HEH Nizam in Fasli 1357 by issuing a supplementary sethwar Ex.B5. As seen from Ex.B-5, the

1st respondent herein was the owner of an extent of Ac.2.21 guntas in Sy.No.116/2 and Ac.1.06 guntas in Sy.No.116/3. Relying on the decision reported in 2002(5) ALD 532 DB;

we hold that the 1st respondent herein is the owner and pattedar of an extent of Ac.3.27 guntas in Sy.No.116/2 and 116/3.

The supplementary sethwar was not challenged by anybody from 1357 Fasli i.e. from 1947 till 2002. This L.G.C. is filed in this Court after a period of more than 55 years. The ownership and title of the 1st respondent was not questioned nor challenged by anybody for a period of more than 50 years. (Emphasis is of ours)"

It is thus clear, the State miserably failed to prove its title over the land in Survey Nos.116/2 and 3; as such, the Special Court has rightly came to the conclusion that the respondents herein are not "land grabbers".

Learned Advocate General, however, contended that

Smt. Pramila Modi suppressed the sale deed, dated

1st Farwardi, 1355 Fasli under which she claims to have purchased the land in question and as the sale deed refers to the land in Survey No.115, she cannot lay any claim for the land in Survey Nos.116/2 and 116/3 which is a

Government land. That an adverse inference is required to be drawn for the reason of non-production of the said document.

We find no force in the submission made by the learned Advocate General for the reason that Smt. Pramila Modi is not placing any reliance on the said sale deed since this issue had been resolved by the Surfekhas administration, which noticed the said purchase of land in question by Smt. Pramila Modi and also her possession in Survey No.116. It is only after careful scrutiny and thorough enquiry of the Survey and Settlement Records by the Sadar-ul-Maham Surfekhas, supplementary sethwar was issued basing on those orders through Surfekhas Secretariat letter No.352, dated

1st Khurdad 1357 Fasli in File No.99/45 of 1356 Fasli.

These aspects of the matter have been thoroughly discussed and brought out by the Director of Settlements, Survey and Land Records and the Board of Revenue. It is important to note that in the concise statement filed in L.G.C., the State while referring to the supplementary sethwar stated that “Smt. Pramila Modi got issued a Supplementary sethwar in 1356 Fasli for the land in Survey No.116 for which she has no title. The Supplementary sethwar was issued in a mistaken impression by the Surfekhas authorities without properly verifying the facts as to whether the land purchased by

Smt. Pramila Modi was in Survey No.115 or in Survey No.116 of Khairatabad Village. Thus the said supplementary sethwar has not been implemented in the revenue records.” It is not pleaded that supplementary sethwar is a created document. It is also not pleaded that the Surfekhas authorities had no authority or jurisdiction to issue such supplementary sethwar. All that is pleaded is that it was issued in a mistaken impression by the Surfekhas authorities.

There is no dispute whatsoever that Khairtabad village was a Surfekhas

village and after amalgamation of all Surfekhas villages in Diwani; Khairtabad village was also merged in Hyderabad District only in the year 1949.

The Nizam and his administration had every right to recognise or grant patta in favour of any individual of his choice not only in respect of Surfekhas properties (private properties of Nizam) but also of the crown properties.

This position in law is clearly enunciated by the Apex Court in ***Ameer-un-nissa Begum v. Mahboob Begum*** and ***Rajah S.V. Jagannath Rao v. Commissioner of Income-tax, Hyderabad.***

The State cannot be permitted to question the action of the Surfekhas administration after a long lapse of more than 50 years on any ground whatsoever, more particularly, in view of the fact that the authorities which were entitled to go into the said question as to whether the supplementary sethwar was issued under any mistake, found that the same was directed to be issued by the Surfekhas administration duly entering the name of Smt. Pramila Modi in order to render justice and in recognition of her possession over the disputed land. It was found that she has been subjected to an unfair treatment by the person, who sold the land to her under the sale deed, dated 1st Farwardi, 1355 Fasli.

The Nizam's administration enjoyed unfettered right to grant such recognition and it could have granted patta even in the absence of any sale deed.

Question 2:

What is the effect of the entries made in the Supplementary sethwar issued by the Surfekhas Administration as early as in the year 1356 Fasli ?

The Surfekhas Administration i.e. the former Nizam Government has gone into the issue with reference to assertion of title by Smt. Pramila Modi under the registered sale deed, dated 1st Farwardi 1355 Fasli, obtained by her from Smt. Rabia Begum and with a view to resolve the controversy directed supplementary sethwar to be issued in her favour for an extent of Acs.3-27 guntas of land and further directed sub-division of Survey No.116 in Survey Nos.116/1, 116/2 and 116/3. The name of Smt. Pramila Modi is shown as "pattadar" over an extent of Acs.2-21 guntas of land and

Ac.1-06 guntas of land in Survey Nos.116/2 and 116/3 respectively. The respondents are not claiming any land whatsoever in Survey No.116/1; whereas the whole claim of the State is based on the entries made with reference to Survey No.116/1 about which there is no dispute whatsoever, since admittedly the entire land in Survey No.116/1 is classified as Government Poramboke land. Learned Advocate General, however, contended that the entries made in the revenue records by themselves do not confer any title in law. The broad submission made needs a careful analysis with reference to authoritative pronouncements of this Court as well as the Apex Court as regards the importance and relevance of the entries in the revenue records. Before we proceed further, it is required to be noticed that the State asserts its right and interest in the land itself is based on the entry in the revenue record as against Survey No.116/1 of Khairtabad village. The sheet anchor of the case of the State is that an entry made in the Khasra pahani for the year

1954-55 in which the entire land in Survey No.116/1 of Khairtabad village is shown as Government Poramboke.

That apart from the said entry there is no other document based upon which, the State asserts its right, title and interest over the land in question.

Learned Advocate General, placed reliance upon the decisions reported in ***Corporation of Bangalore City v.***

M. Papaiah; State of Himachal Pradesh v. Keshav Ram & Others; Sawarni v. Inder Kaur; and Mahendra

C. Mehta & Others v. Kasalya Co-operative Housing Society Ltd., Hyderabad & Others.

The observation that *"it is firmly established that the revenue records are not documents of title"* made in ***Corporation of Bangalore City's Case (6 Supra),*** are required to be understood in the proper background.

A judgment must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. "It is trite that any observation made during the course of reasoning in a judgment should not be read divorced in the context in which they were used" (***See: State of Gujarat and others v. Akhil Gujarat Pravasi V.S. Mahamandal and others).*** It is neither open for a Counsel nor for the Court to pick out a word or sentence from the judgment divorce from the context in which the said question had fallen for consideration.

I n ***Keshav Ram's Case (7 Supra),*** it so happened, the disputed land originally stood recorded in the name of one Raja Sahib of Keonthal and thereafter the State was recorded to be the owner of the land in the record of right prepared in the year 1949-50 and all of a sudden without any order of the Assistant Settlement Officer directing necessary correction to be made, the name of the plaintiffs therein was entered in the revenue register. It is in that background, the Apex Court observed 'such' an entry in the revenue paper by

no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs.

The observation in ***Sawarni's case (8 Supra)*** that "mutation of name in the revenue records does not create or extinguish the title nor has any presumptive value on title" is also required to be understood with reference to the provisions of the Act under which the records are maintained.

It is to be borne in mind that every revenue record maintained for whatever purposes cannot be treated as record of right. There are certain revenue records, which are maintained in the usual course of administration under the governmental orders issued from time to time. Such records are not maintained under any relevant provision of law.

The entries made therein may not be after making necessary enquiry with due notice to the persons who are likely to be affected by the entries made in such revenue records. That a distinction is to be made between the revenue records which are maintained by the administration with reference to statutory enactments and such records, which are maintained under administrative instructions issued from time to time by the State and its agencies. For instance, every record of right prepared and maintained under the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 shall be presumed to be true until the contrary is proved and until it is otherwise amended in accordance with the provisions of the Act. Every owner, pattadar etc., may apply for issue of the passbook and the title deed and the title deed so issued duly certified by the competent authority shall be the title deed in respect of an owner/pattadar and it shall have the same evidentiary value with regard to the title for the purpose of creation of equitable mortgage under the provisions of the Transfer of Property Act, 1882 as a document registered in accordance with

the provisions of the Registration Act, 1908. The true effect of the entries made even in a record of right is not to create rights where none existed, but entries raise the presumption that such rights exists. The entries are *prima facie* evidence of possession and right to hold the land.

The importance of the entries made in the records and their evidentiary value depends upon the nature and scope of the statutory provisions under which such records are maintained. That all revenue records and entries made therein cannot be grouped together for considering the importance and nature of entries made in such revenue records. The overbroad view ignoring the difference between one revenue record and the other and the relevant provisions under which they are prepared and maintained has let to an anomalous situation. This is an area of the law, which has been much criticised as unsatisfactory and unsettled as lacking foreseeable and practical outcomes as operating ineffectively and inequitably. Suffice it to bear in mind, the evidentiary value of the entries made in the revenue records depends upon the very nature of the record and the relevant provision of law under which such records are maintained. The answer to the question as to the evidentiary value of the entries made in the revenue record is required to be decided with reference to each of the record and the entries made thereunder.

The question is whether the entries made in the sethwar are mere revenue entries meant for revenue purposes ? Whether the patta constitutes evidence of title ?

We have already noticed that the Surfekhas authorities for resolution of the dispute and after due enquiry directed issuance of supplementary sethwar

duly incorporating the name of Smt. Pramila Modi as Pattadar for an extent of Acs.3-27 guntas of land in Survey Nos.116/2 and 116/3 of Khairtabad village.

What is the meaning of expression "Pattadar" ?

According to Section 2(11) of the Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli (for short 'the Land Revenue Act'), '*Pattadar'* means the person who is directly responsible to the Government for payment of land revenue and whose name has been entered as such in Government records whether he be personally in possession of the holding or through his Shikmidar.

According to Section 2(12) of the Land Revenue Act, '*Shikmidar*' means the person who like Pattadar possesses a title to the land or who from the beginning has been jointly in possession of the land with the Pattadar or who, before the commencement of this Act, has acquired by virtue of any regulation in force, or may acquire by virtue of that law the right of a Shikmidar.

It is thus clear that Pattadar means a person, who possesses a title to the land whether he is in possession of the land or not; is responsible to the Government for payment of land revenue. Pattadar is one whose title to the land has been recognised.

Whether the pattas as recorded in sethwar (Settlement Record) is evidence of title and whether the entries in Sethwar and Tippans prepared after the enquiry under Sections 77, 78, 86 and 88 of the Land Revenue Act have

any bearing on the questions of title, had fallen for consideration in ***Union of India v. Vasavi Co-operative Housing Society Ltd.,.***

This Court after referring to its earlier decisions rendered under the Land Revenue Act in ***Anthya v. Gattadu (AIR 1950 Hyderabad 58); Phoola Bhanna v. Rekha Deva (AIR 1957 Hyderabad 23); and Syed Jalal v. Targopal (AIR 1970 A.P. 19),*** and relevant provisions of the Land Revenue Act, observed:

> "It is thus recognised that transfer of a patta of a holding would amount to transferring of all that is necessary to effectually transfer agricultural land and vest a title in the person to whom it is transferred. Transfer of patta is thus nothing but a transfer of title itself. It is thus clear that patta is nothing but a title itself so far as the agricultural land is concerned in Telangana area of State of Andhra Pradesh. The Division Bench in ***Syed Jalal v. Targopal (AIR 1970 A.P. 19)*** while construing various provisions of the Land Revenue Act and the scheme of the Act observed that "indubitably, the patta of agricultural land itself is a evidence of right of the holder, a transfer of which is also deemed to be a permanent alienation.
>
> It is thus clear that so far as the agricultural lands are concerned, the pattedar is the one in whom the title vests and the patta of agricultural land itself is a evidence of title."

In the circumstances, the entries in the sethwar prepared and maintained under the provisions of the Land Revenue Act cannot be equated to that of mere revenue entries for the purpose of collection of land revenue.

This Court after referring to the very decisions upon which the learned Advocate General placed reliance observed:

> "We are required to notice that in none of the judgments

> referred to hereinabove, there is any reference to any of the statutory provisions under which the revenue records referred to therein, viz., Revenue Registers/Settlement Registers/Jamabandi Registers, are maintained. There is no indication as to whether those registers or records were maintained under any statute. It is not even clear as to whether those documents were maintained by any statutory authority in discharge of its normal official duties.
> The nature of the documents and the entries made therein are not dealt with in any one of those judgments."

As noticed above, the entries in the revenue records were based on the supplementary sethwar, the genuineness of which is not put in issue. Admittedly, supplementary sethwar was issued by the Surfekhas Secretariat after conducting a detailed enquiry into the matter conferring the right and title in favour of Smt. Pramila Modi. Therefore, this is not a mere case of placing reliance on the entries in the revenue records. There is ample evidence to show that the right and title of Smt. Pramila Modi flows out of the supplementary sethwar, which was examined in detail by the Director of Settlements, Survey and Land Records, Hyderabad, the Board of Revenue and the State Government thereafter. Further, this was also examined by this Court in W.P. No.4526 of 1975 and C.C. No.44 of 1976 and also in W.P. No.10159 of 1998, which was confirmed in W.A. No.2235 of 1998 and further by the Supreme Court in S.L.P. No.12103 of 2000.

This is not a case where reliance is placed exclusively upon the entries in the revenue records in proof of title over the disputed land. Entry in the sethwar recognising a person as 'pattadar' cannot be equated and treated as a mere entry in ordinary revenue record. Patta itself is evidence of title.

For the aforesaid reasons, we find no merit in the submission made by the learned Advocate General.

Now we shall proceed to examine questions 3 and 4 viz.-

Q.3) Whether the entries in TSLR by themselves confer or extinguish the right, title and interest of any person over the land ?

Q.4) Whether the order, dated 12-05-1994, passed by the Commissioner of Survey Settlement and Land Records is void, and, if so, what is its effect ?

Questions 3 and 4 being interconnected and complementary to each other are taken up together for decision.

Learned Advocate General submitted that after completing town survey of Khairtabad village during the years 1965-1970 under the Boundaries Act, a statutory notification as required under Section 13 of the Boundaries Act was published in Gazette No.60, dated 25-09-1976, which has become final since the same has not been challenged by way of suit as provided for under Section 14 of the Boundaries Act within three years from the date of publication of the said final notification and thus, the entries in the TSLR have become final and conclusive proof, which cannot be directed to be altered by any authority whatsoever; the order of the Commissioner of Survey Settlement and Land Records, Hyderabad, dated 12-05-1994, for correction of entries in TSLR as T.S. No.3/1/1A and 3/1/1B for an extent of

Acs.2-21 guntas and Ac.1-06 guntas of land respectively correlating to Survey Nos.116/2 and 116/3 is void and inoperative; the order issued in purported exercise of power under B.S.O. 34-B(10) is without any jurisdiction.

Learned Advocate General contended that void order can be challenged even in collateral proceedings. He relied on a decision of the Apex Court in ***Rafique Bibi v. Sayed Waliuddin.*** The submissions made by the learned Advocate General require deeper scrutiny with reference to the provisions of the Boundaries Act.

The Boundaries Act is an Act to amend the law relating to survey of lands and settlement of boundary disputes.

The Act confers power upon the State Government to order a survey of any Government land or of any boundary of such land or of the boundary forming the common limit of Government land and land that is not a Government land and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to right, title and interest of the persons in the land. It is neither the object nor the scheme of the Act. It is not a record of right. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971.

The question as to the nature and scope of the entries in TSLR had fallen for consideration in W.A. Nos.115 and 160 of 2000 before a Division Bench of this Court in which it is observed that “the entries in TSLR are no doubt relevant. <u>But they are not conclusive</u>. It is common knowledge that there may be many instances where the owner of land in urban areas will not be in a position to correlate the house numbers or wards numbers to the survey numbers or the entries may not be upto date and that may introduce some practical difficulties in obtaining TSLR extracts……The TSLR cannot be regarded as a sole guiding factor.”

Speaking for the Division Bench Justice P. Venkatrama Reddi (as His Lordship then was) observed:

> "Assuming that the TSLR extract is not available in respect of a particular property or TSLR entries do not go to substantiate the writ petitioner's case, the question then is whether the building permission should be refused automatically. The answer in our view should be in the negative……TSLR may be one such document……Entries in TSLR are no doubt relevant. But they are not conclusive. …… TSLR cannot be regarded as a sole guiding factor……TSLR entries have to be considered in conjunction with other documents which the applicants would like to place reliance upon."

It was further observed:

> "The question of title and lawful possession of the applicants cannot be solely decided on the basis of TSLR entries."

In ***Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad District,*** one of us (B. Sudershan Reddy, J) held that 'an entry made in TSLR *per se* could not create any doubt or cloud on the right, title and interest of a person in respect of any land."

This view received its affirmation in the hands of a Division Bench of this Court in W.A. No.1096 of 2001 against which the District Collector preferred S.L.P. and the same was dismissed.

In such view of the matter, the order passed by the Commissioner of Survey

Settlement and Land Records, dated 12-05-1994, according permission for correction of the entries in TSLR, pales into insignificance. Whether the said order is implemented or not is of no consequence. The Special Court upon appreciation of evidence available on record upheld the title of the respondents with reference to the oral and documentary evidence available on record.

In the very decision, ***Rafique Bibi's Case (12 Supra),*** upon which learned Advocate General placed reliance,

the Apex Court administers caution as to "what is 'void' has to be clearly understood…….Two things must be clearly borne in mind. Firstly, "the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense:

their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results. (*Administrative Law,* Wade and Forsyth, 8th Edn., 2000, p.308) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. 'The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain'."(*ibid., p.312)*

The acceptance of submissions made by the learned Advocate General, in this case, in our considered opinion, may produce unacceptable results.

The town survey operations went on from 1965-1970 and final notification

was issued on 25-9-1976 as is required under Section 13 of the Boundaries Act. It is true, none of the respondents questioned the entries made in the TSLR within three years from the date of publication of final notification under the provisions of the Boundaries Act.

But even while town survey operations were in progress,

the Board of Revenue vide its order, dated 24-02-1965, having confirmed the title and possession of Smt. Pramila Modi over an extent of Acs.3-27 guntas of land in Survey Nos.116/2 and 116/3, declared that she is entitled to get her land demarcated to the said extent as per the plan approved by the Surfekhas Secretariat and included in File No.99/45 of 1356 Fasli.

The Director of Settlement, Survey and Land Records as well as the Board of Revenue after hearing the Land Records Officer, Hyderabad District, found the entries made in the sethwar to be genuine based upon which Smt. Pramila Modi was entitled for demarcation of the land. The said orders received affirmation in the hands of the Government vide its order, dated 03-12-1968. The revenue authorities slept over the matter on account of which Smt. Pramila Modi was constrained to file W.P. No.4526 of 1975 in which this Court vide its order, dated 28-08-1975, directed for implementation of the orders of the Board of Revenue, Hyderabad. That in spite of the directions, the orders were not implemented until Contempt Case No.44 of 1976 was filed in which an undertaking was given by the District Collector on behalf of the Government stating that Smt. Pramila Modi was being informed that supplementary sethwar has been since received and steps for implementation of the same are being taken and the said mutation will be finalized during Jamabandi.

Can the State be allowed to take advantage of its own inaction in not

implementing the directions of this Court ? Whether the action of the State in making the entries in the TSLR incorporating its own name contrary to the directions issued by this Court and its own undertaking given in
C.C. No.44 of 1976 is tenable ?

The order passed by the Commissioner of Survey Settlement and Land Records, dated 12-05-1994, is required to be understood in this background. The Commissioner had not undertaken to issue any fresh directions on his own adjudicating the correctness of the entries made in the TSLR for the first time as contended. Wrong entries in the TSLR, which were made contrary to the orders issued by this Court were directed to be corrected. The Commissioner, in fact, referred to the orders passed by this Court and found that the Collector, Hyderabad District incorporated the entries of supplementary sethwar in the village pahanies of 1980-1981, but the entries in the town survey registers have not been corrected. That even if the order passed by the Commissioner of Survey Settlement and Land Records, Hyderabad is to be considered as void, the question is whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India should interfere with that order and issue a Writ as prayed for at this stage ignoring the conduct of the State in not implementing the directions of this
Court in W.P. No.4526 of 1975 and C.C. No.44 of 1976.
In our considered opinion, any such order from this Court may amount to resurrecting and reviving an illegal action of the State in not implementing the orders of this Court, as observed by the Apex Court in ***Rafique Bibi's Case (12 Supra)*** "the order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain." The order passed by the Commissioner of Survey Settlement and Land Records cannot be ignored on the ground of it being a void one. The Special Court rightly rejected the contention. That at any rate, the said order passed by the

Commissioner of Survey Settlement and Land Records one way or the other does not determine the right, title and interest of Smt. Pramila Modi in the land in question. A mere entry made in the TSLR itself would not be enough to deny the title of the owners.

Question 5:

Whether the judgment of the Special Court suffers from any infirmities and errors apparent on the face of the record requiring interference of this Court in exercise of its Certiorari jurisdiction ?

L.G.C. No.10 of 2002 was filed by the State alleging that the respondents therein have grabbed an extent of Acs.3-27 guntas of land in Survey No.116/1 of Khairtabad village.

The respondents have pleaded that they are the owners of the land in Survey Nos.116/2 and 116/3 but not the land in Survey No.116/1. The State did not produce even *prima facie* evidence either documentary or oral to establish its case against the respondents. The Special Court on analysis of the evidence both oral and documentary held that the State has failed to establish that the land in possession of the respondents forms part of land in Survey No.116/1 and the application schedule property (land in question) is located in Survey Nos.116/2 and 116/3. The Special Court found

Smt. Pramila Modi to be the true and absolute owner of the land who in turn sold part of the land in favour of two persons viz., Meer Basheeruddin Ahmed Khan and

Dr. Roop Karan who in their turn sold the same to various persons from whom

respondents 2 to 8 have purchased their respective plots. The Special Court took into consideration every conceivable aspect of the matter and held that the State failed to establish its title over the land in actual possession and enjoyment of the respondents. Neither any relevant material has been excluded from consideration nor any irrelevant material taken into consideration by the Special Court.

In ***State of A.P. v. P.V. Hanumantha Rao,*** the Supreme Court while considering the nature and ambit of power of the High Court to issue a Writ under Article 226 of the Constitution of India observed:

> "……the remedy of the writ petition available in the High Court is not against the "decision" of the subordinate court, tribunal or authority but it is against the "decision-making process". In the "decision-making process",
> if the court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Articles 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining."

It is further observed:

> "……the High Court, which alone could have examined the correctness of the decision of the Special Court, in the absence of any remedy of appeal, rightly observed that it was within its power to re-examine the evidence to ascertain the correctness of the findings of the Special Court……"

We are aware of the distinction between the judicial review and the appeal. This Court in exercise of its power under Article 226 of the Constitution of India

cannot convert itself into a Court of appeal and indulge in re-appreciation or evaluation of the evidence. The finding of fact recorded by an inferior Tribunal can be interfered with by this Court and a Writ of Certiorari issued only if in recording such a finding, the tribunal has acted on evidence, which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all. In all such cases, such errors amount to an error of law.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.

This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding,

the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence,

that would be regarded as an error of law which can be corrected by a writ of certiorari. (See: ***Syed Yakoob v.***

K.S. Radhakrishnan & Others);

In granting a writ of *certiorari* the superior Court does not exercise the power of an appellate Tribunal, the control exercised through it being merely in a

supervisory and not appellate capacity. It does not review or reweigh the evidence upon which the determination of the inferior Court is based nor does it substitute its own views for those of the inferior Tribunal.....A mere wrong decision cannot be corrected by a writ of *certiorari* as that would be using it as the cloak of an appeal in disguise (***See: T.C. Basappa v. T. Nagappa & another)***.

It is in that background, we have examined the matter in somewhat detail and found no infirmity in the order of the Special Court. The Special Court neither acted on evidence, which is legally inadmissible nor has refused to admit the admissible evidence. The Special Court adverted itself to the correct issues that had fallen for its consideration and accordingly answered.

We are in complete agreement with the view taken by the Special Court that the respondents herein have not grabbed the land nor can be characterised as land grabbers.

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W.P. No.19552 of 2004:

For the aforesaid reasons, we hold that the State and its instrumentalities cannot be permitted to interfere with peaceful possession and enjoyment of the land in question by the petitioners in whatsoever manner.

Accordingly, there shall be a direction to the respondents not to interfere with

the peaceful possession and enjoyment of the land in question by the petitioners in any manner whatsoever.

In the result, W.P. No.20537 of 2004 preferred by the State is dismissed and W.P. No.19552 of 2004 filed by the petitioners is allowed.

The parties are directed to bear their own costs.

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B. SUDERSHAN REDDY, J

Date: _____, April, 2005.

_____

C.V. RAMULU, J

PV

To

1. One fair copy to the Hon'ble Sri Justice B. Sudershan Reddy (for his Lordship's kind perusal)

2. One fair copy to the Hon'ble Sri Justice C.V. Ramulu (for his Lordship's kind perusal)

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4. The District Collector, Hyderabad, Office of the Collector and District Magistrate, Nampally, Hyderabad.

5. The Assistant Commissioner of Police,

Banjara Hills, Hyderabad.

6. The Station House Officer, Banjara Hills Police Station,
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